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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/849,721

05/20/2004

Mark A. Hochwalt

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EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

03/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/849,721	Applicant(s) HOCHWALT ET AL.	
	Examiner FRANK I. CHOI	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-55, 57-69, 71-83, 85-98 and 100-107 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50-55, 57-69, 71-83, 85-98 and 100-107 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In view of the Appeal Brief filed on 12/12/2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 50-55, 57-69, 71-83, 85-98, 100-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 62-292165 in view of Furio (H1579), Gioffre et al. (US Pat. 4,795,482), HU 22187 T and JP 61106162.

JP 62-292165 discloses a deodorant comprising organic acid, for example, aspartic acid and an acidic metal salt of zinc, copper, iron, tin, etc. where the amount of the metal salt ranges from 10 to 40 wt% (Abstract). It is disclosed that the deodorant can be combined with a carrier, such as zeolite, paper, cloth or other porous material (Abstract).

Furio disclose the combination of intermediate ratio $\text{SiO}_2/\text{Al}_2\text{O}_3$ zeolite having a $\text{SiO}_2/\text{Al}_2\text{O}_3$ ratio of about 10 or less and a high ratio $\text{SiO}_2/\text{Al}_2\text{O}_3$ zeolite such as disclosed in US Pat. 4,795,482 for odor control (Column 3, lines 9-15, Column 4, lines 44-68).

Gioffre et al. (US Pat. 4,795,482) disclose that clinoptilolite has a nominal framework $\text{SiO}_2/\text{Al}_2\text{O}_3$ molar ratio of about 10 and an zeolite having at least about 90 percent framework of tetrahedral oxides units being SiO_2 tetrahedra, a sorptive capacity for water of less than 10 weigh percent when measure at 25 degrees Celsius and 4.6 torr, a pore diameter of at least 5.5 Angstroms, and a $\text{SiO}_2/\text{Al}_2\text{O}_3$ ratio of about 35 to infinity, preferably 200 to 500, where substantially all the water of hydration has been is removed (Column 2, lies 14-68).

HU 22187 T discloses the combination of clinoptilolite with organic and inorganic additives for use as moisture absorbent and deodorant (Abstract).

JP 61106162 discloses that fumaric acid combined with a ferric salt is effective as a deodorant (Abstract).

The prior art discloses a composition for controlling odors containing the combination of aspartic acid, acidic metal salt of zinc, copper, iron, tin, etc which can be combined with a carrier, such as zeolite, paper, cloth or other porous material. The difference between the prior art the claimed invention is that the prior art does not expressly disclose the use a synthetic zeolite having at least about 90 percent framework of tetrahedral oxides units being SiO_2

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tetrahedra, a sorptive capacity for water of less than 10 weigh percent when measure at 25 degrees Celsius and 4.6 torr, a pore diameter of at least 5.5 Angstroms, where the water hydration has been substantially removed. However, the prior art amply suggest the same as the prior art discloses deodorant compositions and articles containing the combination of aspartic acid, zeolite and acidic metal salt, combinations of organic acids, such as fumaric acid and ferric salt as a deodorant, that a mixture of intermediate zeolite, having a SiO_2/Al ratio of $\text{SiO}_2/\text{Al}_2\text{O}_3$ ratio of about 10 or less, and high zeolite is effective for controlling odor and that clinoptilolite has a ratio of about 10 and that the synthetic zeolite disclosed in US 4,795,482 is a suitable high zeolite and has at least about 90 percent framework of tetrahedral oxides units being SiO_2 tetrahedra, a sorptive capacity for water of less than 10 weigh percent when measure at 25 degrees Celsius and 4.6 torr, a pore diameter of at least 5.5 Angstroms, where the water hydration has been substantially removed. As such, one of ordinary skill in the art would have been motivated to modify the prior art as above with the expectation that the use of the combination of clinoptilolite, synthetic zeolite, aspartic acid and acidic metal salt would be effective in controlling odors. Further, one of ordinary skill in the art would expect that fumaric acid would also be effective in place of or in addition to the aspartic acid.

The Examiner has duly considered the Applicant's arguments but deems moot in light of the new grounds of rejection herein.

The Applicant's arguments appear to be based solely on JP 05-084283. JP 05-084283 is no longer part of the rejection herein, as such, the Applicant's argument do not overcome the rejection.

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Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi
Patent Examiner
Technology Center 1600
March 27, 2008

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616